



## CHAPTER 5: HOMEBUYER ACTIVITIES

Homebuyers may use HOME funds for acquisition only, acquisition/rehabilitation or new construction of homes. This chapter covers the kinds of assistance that may be provided to homebuyers, eligibility criteria, and how HOME funds may be used by applicants. It also discusses homebuyer program design issues facing the participating jurisdiction (PJ), including working with private lenders and selecting an appropriate recapture or resale method.

This chapter is divided into two parts: HOME Program requirements, and program design and implementation issues.

### NOTES

## PART I: HOME PROGRAM REQUIREMENTS

This part covers the kinds of HOME assistance that may be provided to homebuyers, eligibility criteria and long-term affordability. A summary of the key homebuyer rules and how to document compliance with the requirements of these rules is provided as Exhibit 5-5.

### ELIGIBLE ACTIVITIES

- ◆ Homebuyer programs can be structured in any number of ways to encourage the acquisition, acquisition and rehabilitation, or the new construction of affordable homes. Program design will be guided mainly by community needs and the local housing market.
  - Acquisition: Acquisition is an eligible activity under HOME.
    - ✓ The PJ can help eligible homebuyers purchase affordable homes by providing downpayment or closing cost assistance, or by reducing the monthly carrying costs of a loan from a private lender. (PJs could also provide mortgages for home purchase, although few do this because it constricts the number of households that can receive assistance.)

- ✓ This approach to homeownership is best used in areas where an adequate supply of housing exists and where a grant or loan can make housing affordable to low-income households.
  - ✓ For a discussion of appropriate forms of assistance, see the next section, “Forms of Financial Assistance.”
  - Acquisition and rehabilitation: HOME funds can also be used to fund rehabilitation activities. In areas where there is insufficient standard housing, the PJ may want to incorporate a rehabilitation component into its homebuyer program. In this case, there are two acceptable approaches.
    - ✓ The PJ might acquire and rehabilitate, or assist a developer to acquire and rehabilitate, substandard properties to be sold after rehabilitation to low-income purchasers.
    - ✓ As an alternative, the PJ might provide assistance directly to the homebuyer to perform the rehabilitation after the purchase. In such programs, the PJ will often offer rehabilitation loans in addition to, or instead of, the downpayment and closing cost assistance discussed above under “acquisition.” PJs may also use a loan guarantee to minimize the lender’s risk associated with the rehabilitation work. See the next section, “Forms of Financial Assistance,” for more discussion.
  - New construction: New construction is also a HOME eligible activity.
    - ✓ In areas where there is an insufficient supply of appropriate housing, the PJ may want to provide subsidies to stimulate construction of new housing.
    - ✓ The PJ may develop housing itself or may work directly with developers to construct this housing. Another option is to provide HOME funds to other organizations or individuals to contract for the construction.
  - ◆ **Lease-purchase**: A lease-purchase option may be used in conjunction with a homebuyer program.
- If lease-purchase housing is not conveyed ***within 36 months of signing the lease purchase agreement*** or ***within 42 months of project completion***, the project becomes a HOME rental project subject to HOME rental rules.

**NOTES**

- Ownership must be conveyed to an eligible homebuyer **within 36 months of signing the lease-purchase agreement, or within 42 months of project completion.**
  - ✓ If at the end of the 36-month period, the household occupying the lease-purchase unit is not eligible or able to purchase the unit, the PJ has an additional six months to identify an eligible homebuyer to purchase the unit.
  - ✓ In all cases, if a homebuyer does not purchase the unit by the end of the 42-month period, it must turn into a HOME rental unit.
- In accordance with an amendment to the HOME statute effective October 21, 1998, the homebuyer must qualify as a low-income family at the time the lease-purchase agreement is signed.
- ◆ Lease-purchase arrangements can assist households at the lower end of the income range by helping them to accumulate a downpayment while they build their “ownership skills.”
- ◆ HOME-assisted rental units may be converted to homeownership units with or without the use of additional HOME funds by having the owner of the rental units sell, donate or otherwise convey the units to the existing tenants.
  - If additional HOME funds are used to help the tenants become homeowners, the minimum period of affordability is the affordability period required by the amount of direct homeownership assistance provided (see discussion under “Long-Term Affordability” later in this chapter).
  - If no additional HOME funds are used, the homeownership units are subject to the resale provisions and to a minimum period of affordability equal to the remaining affordability period that would apply if the units continued as rental units.

**FORMS OF FINANCIAL ASSISTANCE**

- ◆ PJs may use any of the forms of financial assistance described in Chapter 3: General Program Rules to structure HOME assistance for homebuyer activities. Generally, for homebuyer assistance programs, the PJ will use the following forms of assistance:

- Grants;
  - Deferred-payment loans;
  - Below-market-rate loans; and
  - Loan guarantees.
- ◆ These forms of assistance are discussed in detail in Chapter 3: General Program Rules and their benefits for homebuyer programs are provided in Exhibit 5-1.
  - ◆ In determining the forms of assistance, the PJ should consider the particular needs of the program's target participants. The following list discusses alternative designs for homebuyer programs and the appropriate forms of assistance.
    - Downpayment and closing-cost assistance: For many potential homebuyers, the biggest barrier to homeownership is the downpayment and closing costs. While they may have a steady income that would allow them to make monthly payments, they do not have the means to save for the upfront costs of purchasing a home. In these cases, HOME funds can be provided in the form of a grant or a deferred-payment loan. When deciding whether to use grants or deferred-payment loans, consider the factors listed in Exhibit 5-1.
    - Gap financing: Other homebuyers may have a steady income that is insufficient to cover the total monthly payment. In this case, HOME funds can be used to reduce monthly carrying costs by providing gap financing.
      - ✓ The most efficient way to reduce the size of the monthly payment is to provide the homebuyer a grant or a loan (deferred-payment or below-market interest) to reduce the principal amount that he or she must borrow. (However, the PJ may also consider an "interest buydown" -- providing funds directly to the lender to reduce the interest rate on the borrower's loan.)
      - ✓ The gap financing, if provided as a loan, can be paid in small monthly installments (for a below-market-rate loan) or at the sale of the property (if a deferred-payment loan).
      - ✓ For additional considerations about grants and loans, see Exhibit 5-1.

**NOTES**

- Development subsidy: Another way to reduce the homebuyer's monthly housing costs is for the HOME program to subsidize the sales price of the house. If the HOME program provides a developer a subsidy, the developer can then offer the home at a lower sales price that presents a lower burden to low-income homebuyers. The development subsidy is generally a grant to the developer.
- Loan guarantees: Loan guarantees are a useful tool for strengthening partnerships between the HOME program and local lenders. By mitigating the risk to the lender, they allow lenders to make loans they might otherwise find too risky. This is particularly useful for projects that involve rehabilitation, or in cases where homebuyers have sufficient resources but are deemed to be high risks by the lender. Exhibit 5-1 lists the advantages and disadvantages of loan guarantees.

**ELIGIBLE COSTS**

Exhibit 5-2 lays out the eligible HOME costs under a homebuyer program.

**ROLES OF NONPROFITS**

- ◆ Potential roles for nonprofits in homebuyer programs include the following:
  - A nonprofit may act as a PJ's subrecipient and manage a homebuyer program on behalf of the PJ.
  - A nonprofit may take on a limited administrative role for the PJ, such as marketing the program in its neighborhood, or helping the PJ translate materials into the language spoken by neighborhood residents.
  - A nonprofit may act as a developer, building or acquiring and rehabilitating, homes for eventual sale to homebuyers.
  - A nonprofit may act as a community advocate or advisory group.
  - A nonprofit may provide counseling to buyers/owners on behalf of the PJ.

EXHIBIT 5-1

ADVANTAGES AND DISADVANTAGES OF VARIOUS SUBSIDY APPROACHES

SUBSIDY	PROS	CONS
<b>Grants</b>	<ul style="list-style-type: none"> <li>• Simple to administer</li> <li>• Easy to explain</li> <li>• Often necessary, especially to reach very-low-income</li> </ul>	<ul style="list-style-type: none"> <li>• Expensive</li> <li>• No repayment possible</li> <li>• May be hard to “sell” politically</li> <li>• May create expectations of additional free assistance in the future</li> </ul>
<b>Deferred-Payment Loans (DPL)</b>	<ul style="list-style-type: none"> <li>• Simple to administer</li> <li>• Easy to explain</li> <li>• Helpful, since no monthly payment required</li> <li>• Flexible, allows for repayment</li> <li>• Helps prevent windfall gain to borrower if property values increase significantly</li> </ul>	<ul style="list-style-type: none"> <li>• No payment received on a monthly basis</li> <li>• Might never be repaid if property has low value or future appreciation likely to be limited</li> </ul>
<b>Below-Market Rate Loans</b>	<ul style="list-style-type: none"> <li>• Provides immediate repayment to government agency</li> <li>• Allows government agency to act as “banker”</li> </ul>	<ul style="list-style-type: none"> <li>• Time-consuming and staff-intensive to process loan requests</li> <li>• Requires underwriting expertise</li> <li>• Loans must be serviced after origination</li> <li>• Inefficient form of leverage, compared to DPLs and grants</li> </ul>
<b>Loan Guarantees</b>	<ul style="list-style-type: none"> <li>• Simple to administer if no defaults, or if lender responsible for disposition of property if default occurs</li> <li>• Result in high leverage</li> <li>• May induce lenders to make loans by softening loan-to-value and income-to-debt ratios</li> </ul>	<ul style="list-style-type: none"> <li>• Do little to subsidize the cost to the homebuyer</li> <li>• Shift some or all underwriting and default risk from the lender to the PJ</li> <li>• No repayments to the program</li> <li>• Can tie up funds for long periods of time</li> </ul>

**NOTES**

**EXHIBIT 5-2**

**HOME-ELIGIBLE HOMEBUYER COSTS**

<p><b>HARD COSTS</b></p> <ul style="list-style-type: none"> <li>◆ Acquisition of land and existing structures</li> <li>◆ Site preparation or improvement, including demolition</li> <li>◆ Securing buildings</li> <li>◆ Construction materials and labor</li> </ul>	<p><b>SOFT COSTS</b></p> <ul style="list-style-type: none"> <li>◆ Financing fees</li> <li>◆ Credit reports</li> <li>◆ Title binders and insurance</li> <li>◆ Surety fees</li> <li>◆ Recordation fees, transactions taxes</li> <li>◆ Legal and accounting fees, including cost certification</li> <li>◆ Appraisals</li> <li>◆ Architectural/engineering fees, including specifications and job progress inspections</li> <li>◆ Environmental investigations</li> <li>◆ Builders' or developers' fees</li> <li>◆ Affirmative marketing and marketing costs</li> <li>◆ Homebuyer counseling provided to purchasers of HOME-assisted housing</li> <li>◆ Management fees</li> <li>◆ Project costs incurred by the PJ that are directly related to a specific project</li> </ul>
<p><b>RELOCATION COSTS</b></p> <ul style="list-style-type: none"> <li>◆ Replacement housing, moving costs and out-of-pocket expenses</li> <li>◆ Advisory services</li> <li>◆ Staff and overhead related to relocation assistance and services</li> </ul>	

- For a discussion of nonprofits that are CHDOs, see Chapter 8: CHDO Requirements and Activities.

## **THE PROPERTY**

### **Eligible Property Types**

- ◆ Eligible property types include any property that will serve as the purchaser's principal residence, including:
  - A single-family property (one unit);
  - A two- to- four-unit property;
    - ✓ If HOME funds are used to assist a purchaser to acquire one unit in a two- to- four-unit property and that unit will be the principal residence of the purchaser, the long-term affordability requirements apply to the assisted ownership unit only (see affordability discussion later in this chapter).
    - ✓ If HOME funds are used to help a purchaser acquire one or more rental units along with the homeownership unit, the HOME rental affordability requirements apply to the rental units.
    - ✓ PJs have the option of imposing resale or recapture requirements on all of the units (owner and rental). (See discussion entitled "Recapture/Resale" later in this chapter for additional details.)
  - A condominium unit;
  - A cooperative unit or a unit in a mutual housing project (if recognized as homeownership by state law); or
  - A manufactured home.
    - ✓ At the time of project completion, the manufactured housing must be connected to permanent utility hook-ups.
    - ✓ The manufactured housing must be located on land that is owned by the manufactured housing unit owner, or on land for which the manufactured housing unit owner has a lease for a period at least equal to the applicable period of affordability.



**NOTES****Maximum Property Value**

- ◆ As discussed in Chapter 4 under “Maximum Property Value,” the value of any homebuyer/homeowner-occupied property may not exceed 95 percent of the median purchase price for that type of single-family housing for the area, as published by HUD, or in accordance with the Final Rule, as determined locally through market analysis.
  - The section in Chapter 4 called “Determining the 95 Percent of Median Purchase Price Limits” discusses how PJs who choose this option should conduct the market analysis to determine this value.
- ◆ **Acquisition only:** In the case of property that does not require rehabilitation, the sales price of the HOME property to be acquired by a homebuyer may not have a value that exceeds 95 percent of the area median purchase price for that type of housing.
- ◆ **Acquisition and rehabilitation:** If rehabilitation is required, the value of the property **after rehabilitation** may not exceed 95 percent of the area median purchase price for that type of housing. The after-rehabilitation value estimate should be completed prior to investment of HOME funds.

**Determining After-Rehabilitation Value**

- ◆ The process for determining the after-rehabilitation value for a HOME-assisted property is the same for properties rehabilitated by the existing homeowner as it is for properties purchased and rehabilitated by a new homebuyer. While the Final Rule removed the requirement for an appraisal, PJs must use a reasonable method to determine property value. Acceptable methods include:
  - An estimate of value performed by a PJ or subrecipient;
  - An appraisal performed by a licensed fee appraiser or a staff appraiser of the PJ; or
  - A tax assessment of a comparable, standard property, if current and computed for 100 percent of the after-rehabilitation value.
- ◆ These methods are discussed further in Chapter 4: Homeowner Rehabilitation, under the section on “Maximum Property Value.”

### Property Standards

- ◆ **Meeting the appropriate codes:** As with all HOME-assisted properties, homebuyer properties must meet certain written standards. This section discusses these standards briefly. For a full discussion, see Chapter 3: General Program Rules.
  - **Acquisition:** If no rehabilitation or construction is planned, the housing acquired must meet State and local housing quality standards and code requirements. If no such standards or codes apply, the property must meet Section 8 HQS.
  - **Rehabilitation and new construction:** Housing that is being constructed or rehabilitated with HOME funds must meet all applicable state or local codes, rehabilitation standards and ordinances, and zoning ordinances. If no state or local codes apply PJs must use a model code as discussed in Chapter 3. New construction must also meet the Model Energy Code. See Exhibit 3-1 in Chapter 3 for a full listing of applicable codes.
- ◆ **Accessibility:** All assisted housing must meet the accessibility requirements of the Fair Housing Act and Section 504 of the Rehabilitation Act of 1973.
- ◆ **Manufactured housing:** Manufactured housing must meet the Manufactured Home Construction and Safety Standards established in 24 CFR Part 3280, which preempt state and local codes covering the same aspects of performance for such housing.
  - PJs providing HOME assistance to install manufactured housing units must comply with applicable state and local laws or codes. In the absence of such laws or codes, the PJ must comply with the manufacturer's written instructions for installation of the manufactured housing units.
  - Manufactured housing that is rehabilitated with HOME funds must meet the requirements outlined above that apply to all housing constructed or rehabilitated with HOME funds.
- ◆ **Timing:** All codes and standards must be met at the time of occupancy, except when the project involves acquisition and rehabilitation by the homebuyer. If the assisted homeowner is acquiring and rehabilitating a home with HOME funds:

**NOTES**

- The PJ or subrecipient must inspect the property prior to occupancy for health and safety defects. The property must be free from any defects that pose a danger to the health and safety of occupants before occupancy and not later than six months after property transfer.
- The PJ or subrecipient must inspect the property again at project completion. The property must meet written rehabilitation standards and local codes and ordinances at project completion, and within two years of property transfer to the owner.

**THE APPLICANT/BENEFICIARY**

- ◆ To be eligible for HOME funds, the prospective purchaser must:
  - Be low-income; that is, with an annual (gross) income that does not exceed 80 percent of median for the area; and
  - Occupy the property as a principal residence.

**Income Eligibility Requirements**

- ◆ The purchasing household must be low-income at either:
  - A change to the HOME statute effective October 21, 1998, establishes the following timing for qualifying HOME-assisted homebuyers as income-eligible:
    - ✓ In the case of a contract to purchase existing housing, at the time of purchase;
    - ✓ In the case of a contract to purchase housing to be constructed, at the time the contract is signed; and
    - ✓ In the case of a lease-purchase agreement (for existing housing or housing to be constructed), at the time the lease-purchase agreement is signed.
- ◆ **Income definitions:** PJs may choose from three definitions of income to determine eligibility as described in Chapter 3: General Program Rules:
  - The Section 8 Program definition for annual (gross) income;
  - The IRS definition of adjusted gross income as defined for reporting on IRS Form 1040; or

- The definition of annual income as defined by the U.S. Census long form.
- ◆ **Choosing an income definition:** The PJ can use any one of these three definitions for its homebuyer program. However, it should use the same definition consistently for all applicants to the homebuyer program. It does not have to be the same definition it uses for any of its other HOME activities.
- ◆ **Documentation:** Regardless of the income definition used, source documents such as wage statements, interest statements, unemployment compensation statements, etc. must be reviewed to determine annual income.

**Remember:** Eligibility determinations are based on *anticipated* income. Last year's tax return does not reflect next year's earnings (nor does it constitute adequate source documentation).
- ◆ **Timing:** Income qualifications must be completed in accordance with the timeframes outlined above. Income need not be reexamined at the time HOME assistance is actually provided unless more than six months have elapsed since the initial determination.

### Other Eligibility Requirements

- ◆ **Ownership:** The HOME program requires ownership of the property using one of the approved forms described below. Families or individuals own the property if they:
  - Have fee simple title to the property; or
  - Maintain a 99-year leasehold interest in the property; or
  - Own a condominium; or
  - Own or have a membership in a cooperative or mutual housing project that constitutes homeownership under state law; or
  - Maintain an equivalent form of ownership approved by HUD.
- ◆ The ownership interest may be subject only to the following:
  - Mortgages, deeds of trust or other debt instruments approved by the PJ; or
  - Any other encumbrances or restrictions that do not impair the marketability of the ownership interest, other than the HOME Program restrictions on resale.

**NOTES**

- ◆ **Principal residence:** Purchasers must occupy the properties as their principal residence. These stipulations apply for a principal residence:
  - A deed restriction or covenant running with the land should incorporate this requirement.
  - The loan documents between the purchaser and the program administrator should also incorporate this requirement.
  - Temporary subleases are not allowed (exceptions can be made for military families).
  - Loan default and subsequent foreclosure negates the principal residence limitation.

**LONG-TERM AFFORDABILITY**

- ◆ For homebuyers, the monthly housing costs (principal, interest, property taxes and insurance, known as "PITI") do not need to meet initial affordability (e.g., 30 percent of annual (gross) income). Moreover, the homeowner's PITI need not remain below a fixed percentage of his or her income over time.
- ◆ However, the HOME program **does** set affordability periods that relate to the resale of the property. These periods are based on the amount of HOME funds provided for the property (see table below). How the affordability period affects the resale of the property is described in the section titled "Recapture/Resale."

HOME Funds Provided	Affordability Period
<\$15,000	5 years
\$15,000 - \$40,000	10 years
>\$40,000	15 years

**Note:** Prior to the publication of the Final HOME Rule, projects with Federal Housing Administration (FHA) financing required affordability periods consistent with the term of the FHA loan. This requirement no longer applies with the publication of the Final HOME Rule.

**Recapture/Resale**

- ◆ PJs have two options for controlling the resale of the homebuyer property during the affordability period -- the recapture option and the resale option. The PJ may decide which option to choose, or allow the homebuyer to select one.

While the recapture option is simplest for most PJs, some use both the recapture option and the resale option to respond to different market conditions. The PJ must select which option to use before the assistance is provided to the homebuyer. (See Part II of this chapter for additional discussion on how to choose between the two options.)

- ◆ **Some definitions:** In order to discuss the two options, it helps to understand several terms:
  - **Direct subsidy:** A direct subsidy consists of any financial assistance that reduces the purchase price from fair market value to an affordable price, or otherwise subsidizes the purchase (e.g., downpayment or closing cost assistance, subordinate financing).
  - **Development subsidy.** A development subsidy is the difference between the cost to develop housing and the market price. For example, the PJ might provide a \$50,000 construction loan to a developer. The appraised value after construction will be \$45,000 because of neighborhood and market conditions. The \$5,000 difference between the \$45,000 sale price and \$50,000 construction loan is not repaid to the PJ and represents a development subsidy provided to the developer. While the subsidy does not go directly to the homebuyer, it helps make development of an affordable home feasible.
  - **Homebuyer investment.** The homebuyer's investment consists of the portion of initial downpayment paid by the homebuyer combined with the value of any capital improvements made with the homebuyer's funds.
  - **Net proceeds:** The net proceeds of a sale are the sales price minus closing costs and any non-HOME loan repayments.
- ◆ **The recapture option:** This is a mechanism to recapture all or a portion of the direct HOME subsidy if the HOME recipient decides to sell the house ***within the affordability period*** at whatever price the market will bear. Recaptured funds may be used for any HOME-eligible activity.
  - The homebuyer may sell the property to any willing buyer.
  - The sale of the property during the affordability period triggers repayment of the direct HOME subsidy that the buyer received when he/she originally purchased the home.

## NOTES

Example: Mrs. James agrees to buy her first home for \$50,000, and her lender, Citywide Federal, requires a 10 percent (\$5,000) downpayment. Since Mrs. James is low-income and has qualified for private financing, the city's HOME Program agrees to provide a \$4,000 deferred-payment loan -- \$3,000 for downpayment assistance and \$1,000 to help with closing costs. The \$4,000 loan will be subject to recapture should Mrs. James sell her property during the five-year period of affordability.

- Amount of repayment: The PJ may require full or partial repayment of the direct HOME subsidy when resale occurs during the affordability period. The amount to be repaid can be reduced using the following alternatives:
  - ✓ Forgiveness: The PJ may decide to forgive part or all of the direct HOME subsidy, either to compensate for uncertain market conditions (for example, to encourage families to move into a transitional neighborhood), or to provide protection to the homebuyer in the event that the sale proceeds are insufficient to repay the HOME subsidy and the homebuyer's investment.
    - The decision to forgive should be made as part of the homebuyer program design process, not on a case-by-case basis.
    - The PJ should make the conditions for forgiveness clear to the homebuyer at the time of purchase.
    - Forgiveness must be tied to the length of time the homebuyer has occupied the home in relation to the period of affordability (that is, the PJ would forgive 50 percent of the subsidy amount for an owner who sold the home half-way through the period of affordability).

Example: Mrs. James, whose \$4,000 direct HOME subsidy triggered a five-year affordability period, decides to sell at the end of year two. Two-fifths, or \$1,600, of her deferred payment loan is forgiven, resulting in a loan balance of \$2,400 to be repaid from the net proceeds of the sale.

- ✓ Sharing of net proceeds: When the net proceeds are insufficient to repay the direct HOME subsidy and the homebuyer's investment, the net proceeds may be shared in either of two ways:

- *Option #1:* Recapture of the HOME funds may be based on the ratio of the HOME subsidy to the sum of the homeowner's investment (downpayment and any capital improvement investment made by the owner since purchase), plus the HOME subsidy:

$$\frac{\text{HOME Subsidy}}{\text{HOME Subsidy} + \text{Homeowner Investment}} \times \text{Net Proceeds} = \text{HOME recapture}$$

*Example:* Mrs. James invested \$3,000 in her home, including a \$2,000 downpayment and \$1,000 in closing costs. When she sells the house at the end of year two, the net proceeds are \$5,000. The amount of direct HOME subsidy to be recaptured equals:

$$\frac{\$4,000}{\$4,000 + \$3,000} \times \$5,000 = \$2,857$$

Mrs. James receives the balance of the proceeds, or \$2,143 (\$5,000 - \$2,857).

- *Option #2:* The homebuyer's investment may be repaid in full before any HOME funds are recaptured. The PJ may choose to use the available proceeds from the resale to repay the homeowner's investment first. The HOME subsidy is then repaid to the extent that proceeds are available.

*Example:* From the \$5,000 net proceeds, Mrs. James receives her entire investment of \$3,000 back and the PJ receives \$2,000, or one-half of its investment.

- ✓ *Excess proceeds:* Since net proceeds may exceed the amount necessary to repay both the homeowners investment and the HOME subsidy, PJs must plan in their program designs for how excess proceeds would be distributed. Excess proceeds may be paid to the homeowner, retained by the PJ, or shared by both parties.
- Exceptions:
  - ✓ Development subsidies are not subject to recapture. Therefore, the recapture option may not be used for properties that receive development subsidies only (that is, no direct financial assistance to the homebuyer).



## NOTES

These properties are required to meet the resale requirements discussed below.

- ◆ **The resale option:** This option ensures that the HOME-assisted unit remains affordable over the entire affordability term. Using this option, the PJ may either “designate an affordable unit” or use a “presumption of affordability.”
  - Designating an affordable unit: If a unit is designated affordable and it is sold during the affordability period, the sale must meet the following criteria:
    - ✓ The new purchaser must be low-income, meeting the HOME Program definition, and occupy the property as the family’s principal residence. (See discussion of eligibility earlier in this chapter.)
    - ✓ The sales price must be “affordable” to the new purchaser. Affordable is defined by the PJ; many define it as a maximum percentage of the purchaser’s income that can be used to pay the fixed costs of owning a home (that is, loan payments of principal and interest, taxes and insurance, the sum of which is called PITI in the lending industry).

*Example: The City of Clarendon has implemented the resale option for its homebuyer program. It has chosen to define affordability for a subsequent homebuyer as PITI, which does not exceed 32 percent of annual (gross) income.*

- ✓ The original homebuyer, now the home seller, must receive a “fair return” on his or her investment. Fair return is also defined by the PJ.

*Example: The City of Clarendon has defined a fair return as the return of the homebuyer’s initial investment during the affordability period. Program managers considered allowing the homebuyer to keep part of any appreciation that might accrue, but decided against it in hopes of creating a strong incentive to retain ownership for the duration of the affordability period.*

- ✓ PJs must use deed restrictions, land covenants or other similar legal mechanisms to enforce these resale restrictions.
- Presumption of affordability: The presumption of affordability relies on the assumption that a specific neighborhood is affordable and that, therefore, any sale within that neighborhood will be affordable. In other words, market forces will ensure the continued affordability of HOME-assisted properties, which is the primary objective of the resale requirements. Because of this presumption, the homebuyer property does not have to carry the enforceable resale restrictions described above. Instead, the PJ must document the affordability of the neighborhood.
- ✓ The presumption of affordability approach may be used for a particular neighborhood where HOME homeownership assistance is being provided.
- ✓ Homes must have modest values and be affordable to low-income homebuyers using conventional financing.
- ✓ A market analysis must be prepared to document the affordability of these homes. The market analysis must:
  - Evaluate the location and characteristics of the homes and residents in the neighborhood in relation to the larger market area;
  - Document that homes are modest in size and amenities; and
  - Demonstrate that current and projected incomes of neighborhood residents are sufficient to pay the monthly payments associated with conventional financing of a home purchase in the neighborhood.
- ✓ PJs that have developed such data as part of a Neighborhood Revitalization Strategy in their Comprehensive Plans, or as part of an Empowerment Zone or Enterprise Community application, may use data from that submission in lieu of undertaking a new market analysis.
- The market analysis must be updated periodically, as long as the PJ provides homebuyer assistance in that neighborhood and the presumption of affordability approach is used to satisfy HOME's resale requirements.

**NOTES**

- ◆ **Enforcement of the recapture or resale options:** Exhibit 5-3 shows the legal instruments that can be used to meet the requirements of the recapture or resale restrictions.

**EXHIBIT 5-3****ENFORCING RECAPTURE OR RESALE RESTRICTIONS**

Requirement	Recapture	Resale
Principal residence	Deed restriction or land covenant, affidavit, lien*	Deed restriction or land covenant, affidavit, lien
Affordability period	Lien	Deed restriction or land covenant, lien
Repayment of HOME subsidy	Lien	Deed restriction or land covenant, lien
Fair return to owner	N/A	Deed restriction or land covenant, lien
Affordable resale price	N/A	Deed restriction or land covenant, sales contract
Subsequent buyer's income	N/A	Verification, deed restriction or land covenant
* Lien is defined as a recorded deed of trust or mortgage securing repayment of the HOME subsidy.		

**OTHER FEDERAL REQUIREMENTS**

- ◆ Exhibit 5-4 identifies the other federal requirements that must be followed when HOME is used for homebuyer activities. This exhibit is meant to serve as a checklist only; for detailed information on each requirement, see Chapter 11: Other Federal Requirements.
- ◆ Exhibit 5-5 summarizes the HOME requirements applicable to homebuyer programs.
- ◆ HUD's new consolidated Federal lead-based paint regulation took effect September 15, 2000. This regulation makes several important changes in the requirements for Federal community development programs that fund housing. For more information about lead-based paint, see the summary provided in the "Other Federal Regulations" chapter of this manual. Other resources PJs may find helpful are the training manual, *Learning the Rules: Learning the Rules: A Basic Overview of the Lead-Based Paint Regulations for CPD Programs*, the training manual, *Making it Work: Implementing the Lead Safe Housing Rule in CPD-Funded Programs*, and HUD's Office of Healthy Homes and Lead Hazard Control website, <http://www.hud.gov/offices/lead>.

## CHAPTER 5: HOMEBUYER ACTIVITIES

### EXHIBIT 5-4 OTHER FEDERAL REQUIREMENTS

Other Federal Requirements	Apply to Homebuyer Programs?	Special Issues/ Considerations	Regulatory Citations and References
<b><i>Non-Discrimination and Equal Access Rules</i></b>			
Fair Housing and Equal Opportunity	Yes.	PJs must affirmatively further Fair Housing.  Particular attention should be paid to signs of discrimination in sale of properties.	<ul style="list-style-type: none"> <li>92.202 and 92.250</li> <li>Title VI of Civil Rights Act of 1964 (42 U.S.C. 2000d et. seq.)</li> <li>Fair Housing Act (42 U.S.C. 3601-3620)</li> <li>Executive Order 11063 (amended by Executive Order 12259)</li> <li>Age Discrimination Act of 1975, as amended (42 U.S.C. 6101)</li> <li>24 CFR 5.105(a)</li> </ul>
Affirmative Marketing	Yes, for all projects of five or more HOME-assisted units.	PJ must adopt affirmative marketing requirements and procedures.	<ul style="list-style-type: none"> <li>92.351</li> </ul>
Handicapped Accessibility	Yes.	New projects must be designed and constructed in accordance with applicable standards.  Rehabilitated properties may require modifications.	<ul style="list-style-type: none"> <li>Section 504 of the Rehabilitation Act of 1973 (implemented at 24 CFR Part 8)</li> <li>For multifamily buildings only, 24 CFR 100.205 (implements the Fair Housing Act)</li> </ul>
<b><i>Employment and Contracting Rules</i></b>			
Equal Opportunity Employment	Yes.	Contracts and subcontracts for more than \$10,000 must include language prohibiting discrimination.	<ul style="list-style-type: none"> <li>Executive Order 11246 (implemented at 41 CFR Part 60)</li> </ul>
Section 3 Economic Opportunity	Yes, if amount of assistance exceeds \$200,000 <u>OR</u> contract or subcontract exceeds \$100,000.	Include Section 3 clause in contracts and subcontracts.	<ul style="list-style-type: none"> <li>Section 3 of the Housing and Urban Development Act of 1968 (implemented at 24 CFR Part 135)</li> </ul>
Minority/Women Employment	Yes.	PJ must develop procedures and include in all contracts and subcontracts.	<ul style="list-style-type: none"> <li>Executive Orders 11625, 12432 and 12138</li> <li>24 CFR 85.36(e)</li> </ul>
Davis Bacon	Yes, if construction contract includes 12 or more units that are HOME-assisted.	If applicable, requirements apply to the whole project, not just the HOME-assisted units.  Include language in contracts and subcontracts.  Requirements do not apply to volunteers or sweat equity.	<ul style="list-style-type: none"> <li>92.354</li> <li>Davis-Bacon Act (40 U.S.C. 276a - 276a-5)</li> <li>24 CFR Part 70 (volunteers)</li> <li>Copeland Anti-Kickback Act (40 U.S.C. 276c)</li> </ul>
Conflict of Interest	Yes.	PJs should ensure compliance in-house and when using subrecipients.	<ul style="list-style-type: none"> <li>92.356</li> <li>24 CFR 85.36</li> <li>24 CFR 84.42</li> </ul>
Debarred Contractors	Yes.	PJs should check HUD list of debarred contractors.	<ul style="list-style-type: none"> <li>24 CFR Part 5</li> </ul>

## Exhibit 5-4 (Continued)

Other Federal Requirements	Apply to Homebuyer Programs?	Special Issues/ Considerations	Regulatory Citations and References
<b>Environmental Requirements</b>			
Environmental Reviews	Yes.	Categorically excluded <b>not</b> subject to 58.5.  Buildings to be constructed in the future require a compliance review.	<ul style="list-style-type: none"> <li>• 92.352</li> <li>• 24 CFR Part 58 b(5)</li> <li>• National Environmental Policy Act (NEPA) of 1969</li> </ul>
Flood Insurance	Yes.	Must obtain flood insurance if located in a FEMA designated 100-year flood plain.  Community must be participating in FEMA's flood insurance program.	<ul style="list-style-type: none"> <li>• Section 202 of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4106)</li> </ul>
Site and Neighborhood Standards	No.		<ul style="list-style-type: none"> <li>• 24 CFR 893.6(b)</li> </ul>
<b>Lead-Based Paint</b>	Yes for pre-1978 units.	Notices to purchasers and tenants. Visual assessment must be performed. Paint stabilization must be completed (if applicable). Safe work practices and clearance. Provisions included in all contracts and subcontracts.	<ul style="list-style-type: none"> <li>• 92.355</li> <li>• Lead Based Paint Poisoning Prevention Act of 1971 (42 U.S.C. 4821 et. seq.)</li> <li>• 24 CFR Part 35</li> <li>• 982.401(j) (except paragraph 982.401(j)(1)(i))</li> </ul>
<b>Relocation</b>	Yes.	Required notifications to tenants. Required language in offers and contracts for acquisition of property.	<ul style="list-style-type: none"> <li>• 92.353</li> <li>• Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) (42 U.S.C. 4201-4655)</li> <li>• 49 CFR Part 24</li> <li>• 24 CFR Part 42 (subpart B)</li> <li>• Section 104(d) "Barney Frank Amendments"</li> </ul>

### EXHIBIT 5-5 SUMMARY OF KEY HOMEBUYER RULES AND HOW TO DOCUMENT

	Key Home Requirement	Documentation
<b>Eligible Participants</b>		
Owner Income	<ul style="list-style-type: none"> <li>Gross income <math>\leq</math>80% of median income based on the upcoming 12 months.</li> <li>Income is defined by one of three options: Section 8 annual income; annual income under Census long form; or adjusted gross income under IRS Form 1040.</li> </ul>	<ul style="list-style-type: none"> <li>Completed application in project file.</li> <li>Source documentation (wage statements, interest statements) in project file.</li> </ul>
Owner Occupancy	<ul style="list-style-type: none"> <li>Applicant must purchase property and maintain it as his/her <b>principal residence</b>.</li> </ul>	<ul style="list-style-type: none"> <li>Client must sign a clause on the application form certifying that the property is the principal residence.</li> </ul>
Ownership of Property	<ul style="list-style-type: none"> <li>Applicant must obtain ownership of the property through: <ul style="list-style-type: none"> <li><math>\Rightarrow</math> fee simple title;</li> <li><math>\Rightarrow</math> 99-year leasehold interest; or</li> <li><math>\Rightarrow</math> ownership/membership in a cooperative or mutual housing project (if recognized by state law).</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>Title search documentation in project file.</li> <li>Copy of deed or other ownership document in the project file.</li> </ul>
<b>Eligible Property</b>		
Property Type	<ul style="list-style-type: none"> <li>Eligible property types include: <ul style="list-style-type: none"> <li><math>\Rightarrow</math> one-to-four-unit property;</li> <li><math>\Rightarrow</math> condominium unit;</li> <li><math>\Rightarrow</math> cooperative or mutual housing unit, if recognized by state law; and</li> <li><math>\Rightarrow</math> manufactured or mobile home.</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>If 2-4 units, indicate status of non-owner-occupied units in the application.</li> <li>If non-owner units were assisted with HOME funds, provide agreement with homeowner regarding rental requirements and reference to the property's rental monitoring file.</li> </ul>
Property Location	<ul style="list-style-type: none"> <li>Property must be located within geographic area of the PJ.</li> </ul>	<ul style="list-style-type: none"> <li>Application should show address.</li> </ul>
HOME Minimum and Maximum Thresholds	<ul style="list-style-type: none"> <li>An average of a minimum of \$1,000 in HOME funds must be invested in each assisted unit.</li> <li>The maximum HOME assistance per unit is determined by HUD.</li> </ul>	<ul style="list-style-type: none"> <li>Maintain records in project file demonstrating that the average per-unit HOME investment exceeds \$1,000.</li> <li>Maintain project records indicating total HOME subsidy did not exceed maximums provided by HUD.</li> </ul>

Exhibit 5-5 (Continued)

	Key Home Requirement	Documentation
Property Value	<ul style="list-style-type: none"> <li>Sales price must not exceed 95% of the area median purchase price.</li> <li>If rehabilitating property, after rehabilitation value must not exceed 95% of the area median purchase price.                             <ul style="list-style-type: none"> <li>⇒ Use 203(b) limits;</li> <li>OR</li> <li>⇒ Establish local limits and obtain HUD approval.</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>If using local purchase price limits, document data used to determine limits as well as evidence of HUD approval in program files.</li> <li>Document method for determining value in the project file.</li> <li>Copy of sales price or value estimate in project file.</li> </ul>
<b>Eligible Property (Continued)</b>		
Property Standards	<ul style="list-style-type: none"> <li>If acquisition only, property must meet either local codes/standards or Section 8 Housing Quality Standards (HQS).</li> <li>If rehabilitation, property must be free of safety and health hazards prior to occupancy or within 6 months of property transfer, whichever is sooner.</li> <li>Also, if rehabilitation, property must meet applicable codes (local codes/standards or one of 3 nationally accepted codes) within 2 years of transfer.</li> <li>New construction must meet local codes/standards or one of the nationally accepted codes and the Model Energy Code.</li> </ul>	<ul style="list-style-type: none"> <li>Document local code or model code used in program files.</li> <li>Maintain written rehabilitation standards in program files.</li> <li>Include inspection report or certification by inspector in project file.</li> <li>Keep inspection checklist and work write-up in project file.</li> <li>Checklist indicating compliance with Model Energy Code requirements for new construction projects in project file.</li> </ul>
Eligible Activities	<ul style="list-style-type: none"> <li>Acquisition, acquisition and rehabilitation, and new construction.</li> </ul>	<ul style="list-style-type: none"> <li>Document all expenditures.</li> </ul>
<b>Long Term Affordability</b>		
Affordability Period Resale/Recapture	<p>Property must be subject to either resale or recapture revisions for the period of affordability.</p> <ul style="list-style-type: none"> <li>Resale: future sale of property must be to and affordable to low-income buyer.</li> <li>Recapture: portion or all of assistance to buyer must be recaptured at time of sale.</li> </ul>	<p>Resale: mortgage and/or note and deed restriction or covenant restricting future sales.</p> <p>Recapture: Mortgage or note showing formula by which funds will be recaptured.</p>

## PART II: PROGRAM DESIGN AND IMPLEMENTATION ISSUES

### WORKING WITH PRIVATE LENDERS

- ◆ **Advantages:** There are several advantages to working with private lenders when HOME is used to help homebuyers.
  - Private lenders can help increase the levels of housing production possible with the creative use of HOME subsidies.
  - Loan-processing procedures that involve private lenders require less local government staff time and more involvement on the part of the loan applicant, without relinquishing controls needed to account properly for the expenditure of public funds and to ensure good construction work (if rehabilitation or new construction is involved).
  - Lenders can also benefit from partnerships with local governments and nonprofit agencies, resulting in a “win-win” situation for the PJ and the lender.
- ◆ **Program design issues:** In designing a program that incorporates private lenders, key actions by the PJ and decisions early on will help ensure successful negotiations between local governments and the lenders. Such activities include:
  - Identify the target market: Reassure the lender that the program has a market. Therefore, the program must respond to identified needs (such as lack of funds for downpayment) and provide an appropriate service strategy (such as providing downpayment assistance).
  - Design a simple and efficient program: Time is money to the lender, so the program must be simple to understand. Fast processing and clear delineation of roles and responsibilities will ensure program success.
  - Centralize key functions: Provide the lender with one key contact for the negotiations and one key contact for program issues. Help the lender understand the PJ's organization and the decision-making process.
  - Establish realistic program goals: Do not make promises that cannot be kept.



## NOTES

- ◆ **Forms of relationships with lenders:** A local government must first decide how to structure a relationship with a lender, and the degree of formality of that relationship. There are three basic options:

- Informal relationship: This exists when there is no formal cooperation between the PJ and the lender, but there may be cooperation between the two parties on specific projects or referrals between loan programs.

- Semi-formal relationship:

Under this arrangement, the PJ meets periodically with the lenders to explain its homeownership program, including its procedures, forms, eligibility criteria and subsidies, as well as the lender's role in the process. This

arrangement has the advantage of taking some of the burden off of the homeowner, since lenders will understand the benefit of the subsidy and the PJ's role. At the same time, it preserves a great deal of flexibility for the PJ.

**Lender Proposal -- A Good Idea**

To build strong relationships with lenders, have the lender(s) provide a proposal for addressing the following issues:

- Loan origination, including debt-to-income and other underwriting criteria, credit requirements, loan-to-value ratios, and a summary of assigned personnel and experience;
- A proposed interest rate, fee structure and loan term;
- A commitment of a certain volume of loan funds to the program; and
- Types of financing to be provided (i.e., purchase mortgage only or rehabilitation financing).

- Formal relationship: This entails establishing a standard system for referring applicants to participating lenders, typically through a lender agreement. In such an agreement, the PJ and lenders would agree on program processes, underwriting criteria, loan terms and delivery mechanisms. They would also establish clear roles for each party. For instance, the PJ may be responsible for prequalifying applicants, while the lender would later take a complete application from the homebuyers and be responsible for processing the loans. Formal relationships often include lender commitments of funds to the program.

◆ **General negotiating tips**

- Know your lender: Develop an understanding of the institution, its role in the community, the programs it offers, how decisions are made and who makes those final decisions. This process should include a review of the lender's Community Reinvestment Act (CRA) rating and files.
- Obtain commitment from the top: Start negotiations from the top, both within your organization and the lender's. Work out the details of the program **only** after the general commitments have been made.
- Address the lender's needs: Understand the lender's goals and objectives and as part of this process, offer your agency's expertise where appropriate (for example, construction management).
- Know what is and isn't negotiable: There are a number of ways that financing may be provided to borrowers. Determine up front what the lender will and will not discuss as options.
- Utilize the lender's experience and capacity: Lenders can provide valuable insight - don't discount it. Plan to leverage the lender's expertise (such as in underwriting and marketing) in the implementation of the program.
- Compromise: The key to negotiating anything is compromise. Keep objectives at the forefront of all discussions and try to be flexible in your approach to meeting those objectives in order to make the program work for you and the lender.

◆ **Steps to take** in establishing lender relationships:

- Negotiate loan origination and processing responsibilities:

- ✓ Program administrators and lenders must agree in advance to a division of responsibility in the lending process.

**Good Practices**

Given the expertise of local lenders in loan underwriting, they should consider handling the pre-qualified applicants for the rest of the process.

It is often advisable for the lender to designate certain loan officers who will be trained in this program and to use locations convenient to potential homebuyers.

**NOTES**

- ✓ Generally, the program administrator will pre-screen prospective homebuyers, arrange for their homebuyer counseling sessions and possibly assist them in finding a property.
  - ✓ The lender will generally assume loan processing responsibilities including credit checks, income and debt verifications, appraisals, etc. The information obtained in this process should be assembled once and used for both the private lender's first mortgage as well as the program administrator's second mortgage.
  - ✓ If possible, negotiate for mutually acceptable underwriting criteria, including the debt-to-income ratios, loan-to-value ratios, credit policies and related factors.
- Negotiate interest rates and fees:
- ✓ Make sure the rates and fees the lender is proposing are competitive. Typically, private lenders generate a reasonable profit by charging origination fees, along with a combination of discount points and interest rates. In addition, many loan transaction costs are pass-through fees (appraisal, title, credit, etc.).
  - ✓ Subsidy dollars will be lower and the first mortgage more affordable if the lender can be convinced to waive or reduce fees and provide competitive interest rate loans.
  - ✓ To improve the likelihood of continued affordability, loans should normally be fixed-rate. The goal is to ensure that the charges being proposed are reasonable and competitive.
- Execute the lender agreement(s):
- ✓ Where a formal lender agreement is sought, it is important to clearly identify all of the roles, responsibilities and costs in a written agreement between the lender and the program administrator.
  - ✓ At a minimum, the agreement should specify:
    - Contract timeframes;
    - Roles and responsibilities of each entity;

- Interest rates (often a rate based on a well-publicized, relatively stable interest index);
- Loan terms;
- Underwriting criteria (debt to income ratios, loan-to-value ratios, etc.);
- Credit requirements;
- Fees for processing, origination, loan document preparation;
- Standard equal opportunity/fair lending language; and
- Termination provisions (voluntary and for cause).

### SELECTING AN APPROPRIATE RECAPTURE/RESALE METHOD

- ◆ PJs may use either the recapture option or the resale option, or both, to meet the resale requirements of the HOME Program.
- ◆ **Recapture option:** The recapture option provides PJs and homebuyers with maximum flexibility.
  - The homebuyer can resell the property on the open market to any willing buyer at whatever price the market will bear.
  - Lenders are generally comfortable with the recapture option, since it does not restrict or affect the resale transaction until the lender's loan has been repaid.
  - The PJ can tailor the level of the homebuyer's risk to market conditions.

*Example: Property values for single-family homes in the City of Clarendon are barely keeping pace with inflation. To encourage participation in the City's HOME homebuyer program, the City is offering homebuyers who sell during the period of affordability guaranteed recovery -- to the extent that net proceeds are available -- of their investment in the property before any direct HOME subsidy funds are recaptured.*

## NOTES

*In contrast, the County of Kirk has seen strong growth and increasing property values in many areas. The County has structured its recapture provisions to create an incentive for homebuyers to stay in their properties by offering to forgive the HOME subsidy over the period of affordability. Since it is possible that net proceeds will exceed the amount necessary to repay the homebuyer's investment and the HOME Program, the County has specified that the HOME Program will receive 25 percent of any additional proceeds that remain after both the homeowner and the County have recaptured their initial contributions.*

- The recapture of HOME funds can be an important source of program income.
  - The recapture option is relatively easy to administer, since the PJ's role is limited to ensuring that funds are disbursed appropriately at settlement.
  - Recapture cannot be used when: (1) no direct HOME subsidy is provided to the homebuyer (i.e., development subsidy only) or (2) when the direct assistance may not be recaptured (i.e., a grant).
- ◆ **Resale option:** Using the resale option to "designate an affordable unit" enables PJs to control the affordability of HOME-assisted properties over time.
- Used in rapidly appreciating neighborhoods, the resale option ensures that the price of the property remains affordable to low-income buyers for the duration of the period of affordability. If additional HOME funds are invested in the property at resale, the affordability period begins anew.

***Example:** Mr. and Mrs. Chen's homebuyer loan has a 10-year period of affordability. During year eight, Mr. and Mrs. Chen decide to sell their home, and the HOME Program provides the new buyer with a \$5,000 second mortgage for downpayment and closing cost assistance. The new loan carries a five-year affordability period. The affordability period has effectively been extended to 13 years.*

- Homebuyers may have difficulty understanding the implications of the resale option, or may view the requirement for the resale price to be affordable as an unreasonable constraint on their ability to profit from the transaction.
- The resale option is more complex to administer than the recapture option and requires a greater level of effort to enforce.
- The “presumption of affordability” justification simplifies the resale option by removing the resale restrictions, but requires the investment of staff time in preparing, and periodically updating, a market analysis.
- ◆ **What is marketable:** Ultimately, PJs must be concerned with which option is marketable to potential homebuyers, since a homeownership program needs applicants to be successful.